



September 25, 2012

Ms. Sherrie Kinkle
State Board of Equalization
450 N Street
Sacramento, CA 95814

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County-Assessed Properties Division
State Board of Equalization

Re: New Construction Handbook

Dear Ms. Kinkle:

The California Taxpayers Association is very disappointed that our suggestions to improve the board's proposed handbook (AH 410) appear to have been rejected out-of-hand. Our intent was to be helpful to remove clearly illegal portions, as much of the document is very good.

We cannot stress strongly enough that all the provisions that include "or portion thereof" with respect to a major renovation exceed statutory authority. In effect, as written, the board would be advising assessors to make illegal assessments. This language should be removed, as we suggested in our letter dated September 26, 2011.

Section 70 (a) and (b) of the Revenue and Taxation Code reads as follows:

§70. Newly constructed; new construction

(a) "Newly constructed" and "new construction" means

1. Any addition to real property, whether land or improvements, including fixtures, since the last lien date; and
2. Any alteration of land or of any improvement, including fixtures, since the last lien date that constitutes a major rehabilitation thereof or that converts the property to a different use.

(b) Any rehabilitation, renovation or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture is a major rehabilitation of that improvement or fixture.

This is the language that was suggested by the Task Force on Property Tax Administration. The phrase "or portion thereof" does not appear in subdivision (a) or (b).

You cannot even read "or portion thereof" into Section 70(a) and (b), because the Legislature clearly knew how to distinguish when "a portion thereof" would trigger a reassessment as it used the phrase as a modifier in Section 70(c), relating to property destroyed or damaged by a disaster.

Section 70(c) reads (emphasis added):

(c) Notwithstanding subdivisions (a) and (b), where real property has been damaged or destroyed by misfortune or calamity, "newly constructed" and "new construction" does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction. Any reconstruction of real property, or portion thereof, that is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion that exceeds substantially equivalent reconstruction shall have a new base year value determined pursuant to Section 110.1.

Let us repeat, "or portion thereof" does not appear in subdivision (a) or (b) but is used in (c).

We also are surprised that the text of Section 70 is not included in the appendix, and surmise that is missing because it would clearly show those provisions of the handbook using the phrase "or portion thereof" for other than disaster assessments are not correct.

I was the chair of the Task Force, and recall that the discussion regarding new construction was heated, and the recommendations were not unanimous. In fact, the BOE disagreed with the language. However, the majority view of the task force was adopted by the Legislature. Just because the board did not agree with language does not allow the board to undermine the statute with a different approach.

As I recall, several of the reasons for the limits on new construction assessment were:

1. We wanted to limit the number of different base years attached to a single property that would occur if a reassessment of a portion of a structure was permitted.
2. We wanted to encourage property owners to renovate and remodel properties without fear of a reassessment. If a remodeling of a portion of a structure triggers a reassessment, it would have a chilling effect on the remodeling business.
3. We did not believe that the value added by remodeling a portion of a structure could be determined with great accuracy. The cost approach would not be appropriate, as the value of a structure usually is not increased commensurately with the cost of the remodeling. This is common knowledge in the remodeling business. To use the sales factor correctly, you would have to find a comparable structure with a sale before and after the same remodeling. The income approach also would not get us to the added value of any of the remodeled portion of a dwelling.

Even if you disagree with these reasons, you still have an obligation to implement the law, not change it.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Doerr", with a stylized flourish at the end.

David R. Doerr
Chief Tax Consultant